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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1973

No. 73-6338

LARRY HOYTT LAYTON,
Petitioner,

vs.

STATE BAR OF CALIFORNIA
THE COMMITTEE OF BAR EXAMINERS,
Respondent.

On petition for a writ of certiorari to the Supreme Court of the State of California

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

QUESTIONS PRESENTED FOR REVIEW

In his attempt to state the "questions presented for review," petitioner misrepresents a vital fact. His claimed "three years of legal study which is recognized by the State Bar" are "recognized" only in the sense that they are credited toward the completion of the four years

of legal study required of those who follow paths of qualification other than the successful completion of a three-year, full-time study program in and graduation from an accredited (i.e., quality-tested and approved) law school. Petitioner's three years are not recognized as, nor are they, the equivalent of having fulfilled a three-year, full-time program in, and having graduated from, an accredited law school.

The real question that petitioner attempts to raise is:

> Does the requirement, as a condition of admission to practice law in California, of four years of credited law study by persons who do not complete a three-year, full-time study program in, and graduate from, an accredited law school[1] offend either the equal protection clause or the due process clause of the United States Constitution?

Petitioner's remaining "question for review," questioning whether such requirement is a bill of attainder, is too insubstantial for serious consideration by this Court.

STATUTES AND REGULATIONS INVOLVED

The case principally involves § 6060 of the California Business and Professions Code, and the Rules and Regulations implementing its provisions, as adopted and ad-

[1]Other requirements are that the applicant must take and pass a bar examination administered by respondent Committee, and must be at least 18 years old and of good moral character. The particular provision, common to most states, relating to attorneys who are licensed and have practiced a specified number of years in other states is irrelevant here and is disregarded in this brief.

ministered by the respondent Committee of Bar Examiners. Section 6060 and related statutes and the pertinent rules are printed in the Appendix to this brief. Citations in this brief to "§ 6060" and its various subdivisions all refer to this section of the California Business and Professions Code.

STATEMENT OF THE CASE[2]

California law (Calif. Bus. & Prof. Code § 6060(e); Rules Regulating Admission to Practice Law in California [Appendix, pp. i, iv]) requires that, in order to be permitted to take the bar examination, an applicant must have (1) graduated from a law school accredited by respondent Committee of Bar Examiners and requiring substantially the full time of its students for three years, (2) graduated from an accredited law school requiring a part only of its students' time for four years, or (3) studied law for at least four years (a) in a law school which meets certain minimum yearly requirements of classroom attendance, or (b) in a law office or judge's chambers in California under specified supervision, or (c) by correspondence school requiring 864 hours of preparation and study per year for four years, or (d) by any combination of the methods described in (a), (b) and (c).

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[2]The facts relating to petitioner which are stated in the text appear in the record before the Supreme Court of California. Use of the present tense denotes the times pertinent to the events recited.

Petitioner started his study of law in June 1970 at a nonaccredited law school,[3] University of West Los Angeles (hereinafter "UWLA"), which requires completion of 85 semester units over a four-year period as a condition of graduation. In June 1971, he took and failed the 1971 first-year law student's examination. Under the applicable statute (Calif. Bus. & Prof. Code § 6060(g) [Appendix, p. ii]), this failure precluded him from receiving credit for that year of law study toward fulfillment of the legal education requirements prerequisite to his being allowed to take the California bar examination.[4]

In September 1971 he entered another nonaccredited law school, Glendale College of Law (hereinafter "Glendale"), which describes itself in its catalog as an "exclusively part time" law school and requires the completion of 138

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[3]In California, law schools approved by the American Bar Association are prima facie accredited. Respondent Committee, under its somewhat more liberal standards, has accredited seven additional law schools. But under California law (Calif.Ed.Code § 29023(a)(3)), any corporation can qualify as a degree-granting institution by merely filing with the Superintendent of Public Instruction an affidavit that it owns property worth $50,000 used for educational purposes. At present in California there are 22 accredited law schools (15 of them also approved by the American Bar Association), and 30 nonaccredited law schools. A law school becomes accredited when it meets certain standards of admission and advancement of students, quality of teaching and testing, faculty, administration, library, classroom facilities, and ethics. [See Appendix, pp. vi-vii.] Nonaccredited law schools are subject to no such qualitative standards.

[4]An applicant who does not satisfactorily complete the first-year course of instruction in an accredited law school must take a first-year law student's examination. An applicant who is required to take that examination may not receive credit for his first year of study until he has passed the examination and may not receive credit for law study subsequent to the first year and before passing the examination, unless the respondent Committee, for good cause, allows credit for such study (§ 6060(g) [Appendix, pp. ii-iii]).

quarter units as a condition of graduation. After his first year of attendance at Glendale, he passed the first-year law student's examination administered in June 1972 and thereupon became entitled to credit for one year of law study (§ 6060(g)). Thereafter he has continued his studies at Glendale.

On September 6, 1972 he petitioned respondent Committee of Bar Examiners asking for retroactive credit for the year of law study at UWLA which preceded his failure of the first-year law student's examination. The Committee denied the petition.

In October 1973, he filed in the Supreme Court of California a petition for a writ of review, asking that Court to order respondent to permit him to take the February 1974 bar examination (some 2½ years after commencement of his credited law study), or in the alternative the July 1974 bar examination. In this petition he claimed that he had completed three years of law study all of which should be credited toward the legal education requirement; and that before February 1974 he would have completed the classroom equivalent of three years of law study even excluding the year for which credit was disallowed.

The Supreme Court of California denied review. This, under the rule of that Court, constituted a decision on the merits adverse to petitioner.[5]

If petitioner continues his schooling in a nonaccredited law school throughout the current and the next school

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[5]Cf. *Konigsberg v. State Bar* (1957) 353 U.S. 252; and compare *People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 630-631, 268 P.2d 723, 728, app. dism. (1954) 348 U.S. 859.

year, he will receive credit for four years of law school study, and will qualify to take the July 1975 bar examination.

ARGUMENT

FIRST: PETITIONER IS NOT A PERSON AGGRIEVED BY THE STATUTE, OR BY ACTS OF THE RESPONDENT IN PURSUANCE OF IT.

Petitioner makes no claim that any act of respondent has exceeded its authority under the statute. His claim is that the statute itself, and the acts of respondent pursuant to it, violate the equal protection and due process clauses of the United States Constitution. His due process argument is no more than a restatement of his equal protection argument; i.e., a claim of impermissible discrimination.

Although petitioner's claim focuses on the differentiation of legal education requirements as between accredited and nonaccredited schools, petitioner has not fulfilled the minimal educational requirement pertaining to either. He has not graduated from a law school, either accredited or nonaccredited, requiring substantially the full time of its students for three years (the qualification pertaining to three-year accredited-law-school education under § 6060 (e)(1) [Appendix p. i]); nor has he completed at least four years' credited[6] law study in a law school that requires classroom attendance for a minimum of 270 hours a year (nonaccredited-law-school education under § 6060(e)(3)(i) [Appendix, p. ii]).

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[6] § 6060(g) [Appendix, p. ii].

Petitioner in fact seeks to establish for himself, personally, an entirely new classification: a person who does not fit into any of the specified categories of qualifying legal education, but who has passed or will have passed courses entailing a specific total of classroom hours—this being only one of the factors of the prescribed total legal education applicable in some of the specified categories.

The flaw in petitioner's argument lies in his equating classroom hours with total legal education. The distinction which he draws lies not, as he claims, between accredited and nonaccredited schools, for the part-time programs available in both accredited and nonaccredited law schools require four years of law study (§ 6060(e)(2) and (e)(3)(i)).

In short, the issue which petitioner asserts is academic so far as he is concerned. He is not a person injured, within the terms of that issue *(Sierra Club v. Morton* (1972) 405 U.S. 727, 731-732, 735).

SECOND: THE CLASSIFICATIONS OF LEGAL EDUCATION REQUIRED FOR ADMISSION TO PRACTICE LAW IN CALIFORNIA ARE CONSTITUTIONALLY PERMISSIBLE.

Throughout the United States, a substantial legal education is a recognized precondition of permission to take a bar examination. In 24 states and the District of Columbia, this legal education requirement entails graduation from a law school approved by the American Bar

Association.[7] Twenty-one other states require graduation either from a law school approved by the American Bar Association or from a law school accredited by the state supreme court or other state accrediting agency.[8] California is one of only five states which permit other forms of legal education, and is the only state which allows correspondence school study as one of the qualifying conditions. No state has decided that mere passage of a bar examination constitutes fitness to practice law, necessary though bar examinations are to insure that legal education maintains appropriate standards of breadth and quality.

California, for all its liberality in regard to the legal education requirement, has determined that the prerequisite legal education goes beyond mere classroom hours.

Through supervision of the accredited law schools within the state[9] and with certain reliance upon the American Bar Association's supervision of the law schools which it approves, respondent insures the quantum and

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[7]Report of the American Bar Association Section of Legal Education and Admission to the Bar entitled "Law Schools and Bar Admission Requirements; A Review of Legal Education in the United States, Fall 1972," pp. 47-52; "Rules for Admission to the Bar" (1972) West Publishing Company; and see, for example, *Hackin v. Lockwood* (9 Cir. 1966) 361 F.2d 499, certiorari denied 385 U.S. 960; *Application of Schatz* (1972) 80 Wash.2d 604, 497 P.2d 153; *Petition of Batten* (1967) 83 Nev. 265, 428 P.2d 195; *Henington v. State Board of Bar Examiners* (1956) 60 N.M. 393, 291 P.2d 1108; *Ex Parte Florida State Bar Ass'n, etc.* (1941) 148 Fla. 725, 5 So.2d 1.

[8]See the two reports cited in note 7, supra.

[9]See Rules Regulating Admission to Practice in California, Rule IX, § 91(1) [Appendix, p. iv]; Rule XVIII, § 182 [Appendix, p. vi], and Standards and Procedures § 185.4 [Appendix, p. vii].

quality of law school study in such schools. With this control, the state can be satisfied that the student in a three-year accredited-law-school program will in fact devote full time to the study of law throughout three academic years. But respondent has no such assurance or means of assurance with respect to nonaccredited law schools or correspondence schools, which in general serve students who work at other jobs and can devote only part time to law study.

The classification of law students who obtain their legal education by full-time study at an accredited law school which maintains prescribed standards of educational quality, as distinct from students who obtain their legal education in other ways, is no such invidious distinction as are the "suspect" classifications of race, creed, color, sex, or political persuasion. In fact, no part of the classification is directed against any ascertainable person or characteristic group. On the contrary, the classifications established by the California law are rationally, clearly and most intimately related to the protection of the public from ill-trained and incompetent legal practitioners. That this is a matter in which the state has a strong—and indeed compelling—interest is beyond dispute.

THIRD: THE STATUTE IN QUESTION IS NOT A BILL OF ATTAINDER.

Petitioner's bill-of-attainder argument is totally insubstantial.

> "This Court's decisions have defined a bill of attainder as a legislative Act which inflicts punishment

> on named individuals or members of an easily ascertainable group without a judicial trial. In determining whether a particular statute is a bill of attainder, the analysis necessarily requires an inquiry into whether the three definitional elements—specificity in identification, punishment, and lack of a judicial trial—are contained in the statute" *(United States v. O'Brien* (1968) 391 U.S. 367, 383n).

At least two of the vital definitional elements are lacking in § 6060 [Appendix, pp. i-iii]. It is permissive, not punitive. It informs all persons of the various paths by which they may achieve the legal education which is one of their essential qualifications to practice law. The way is open to all; no exclusion of specified persons or classes of persons is commanded.

FOURTH: NO IMPORTANT QUESTION IS PRESENTED FOR RESOLUTION BY THIS COURT

Neither the statute, nor any act of respondent Committee, excludes petitioner from timely admission to the practice of law in California—even in three years from commencement of law study if petitioner had availed himself of the three-year, full-time course of study offered by the typical accredited law school. The statute simply says that he must complete the legal education requirements applicable to his choice of educational path, before taking the bar examination. Petitioner has pursued the method allowed by § 6060(e)(3)(i) [Appendix, p. ii], which entails four years of law study.

As matters now stand, if petitioner continues his schooling at Glendale or any other nonaccredited law school throughout the current and the succeeding school year and completes four years of recognized law school study, he will qualify to take the July 1975 bar examination. His present petition merely seeks to allow him to short-cut all of the permitted methods of satisfying the legal education requirement, and to take the bar examination without having satisfied any of them.

The petition presents no issue of sufficient moment to warrant the intervention of this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

FRANCIS N. MARSHALL,

JOHN A. GORFINKEL,

Attorneys for Respondent.

(Appendix Follows)

Appendix

CALIFORNIA BUSINESS AND PROFESSIONS CODE:

§ 6046. The board may establish an examining committee having the power:

(a) To examine all applicants for admission to practice law.

(b) To administer the requirements for admission to practice.

(c) To certify to the Supreme Court for admission those applicants who fulfill the requirements provided in this chapter.

§ 6047. Subject to the approval of the board, the examining committee may adopt such reasonable rules and regulations as may be necessary or advisable for the purpose of making effective the qualifications prescribed in Article 4.

§ 6060. To be certified to the Supreme Court for admission and a license to practice law, a person who does not comply with Section 6062[1] shall:

(a) Be of the age of at least 18 years.

(b) Be of good moral character.

* * * * *

(e) Have either:

(1) Graduated from a law school accredited by the examining committee requiring substantially the full time of its students for three years.

(2) Graduated from a law school accredited by the examining committee requiring a part only of its students' time for four years.

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[1] §6062 deals with admission to practice in California of attorneys licensed elsewhere, and is irrelevant to the case at bar.

(3) Studied law diligently and in good faith for at least four years, which study shall be:

(i) In a law school that is authorized to confer professional degrees and requires classroom attendance of its students for a minimum of 270 hours a year; or

(ii) In a law office in this State and under the personal supervision of a member of the State Bar of California who is, and for at least five years last past continuously has been, engaged in the active practice of law; or

(iii) In the chambers and under the personal supervision of a judge of a court of record of this State; or

(iv) By instruction in law from a correspondence law school requiring 864 hours of preparation and study per year for four years.

(v) By any combination of the methods referred to in paragraph (3) of this subdivision.

It shall be the duty of the attorney or judge referred to under (ii) and (iii) of paragraph (3) of this subdivision to render such periodic reports to the examining committee as the committee may require.

* * * * *

(f) Have passed a final bar examination given by the examining committee.

(g) After completion of his first year of law study, have passed a first-year law student's examination given by the examining committee. This requirement shall not apply to a student who satisfactorily completes the first-year course of instruction in a law school accredited by the examining committee and who either (1) commenced the study of law and registered with the examining committee as provided in subdivision (d) of this section prior to January 1, 1954, or (2) had completed at least two years of college work as defined in this section prior to matriculating in such accredited law school, nor shall

this requirement apply to an applicant who has passed the bar examination of a sister state or of a country wherein the common law of England constitutes the basis of jurisprudence. An applicant who is required to take such first-year examination shall not receive credit for his first year of law study until he has passed such examination; nor shall he receive credit for any law study subsequent to the first year, and before he shall have passed such examination, unless for good cause in a particular case the committee decides that credit should be given for such subsequent study or for some part thereof.

RULES REGULATING ADMISSION TO PRACTICE LAW IN CALIFORNIA, ADOPTED BY RESPONDENT COMMITTEE OF BAR EXAMINERS PURSUANT TO CALIFORNIA BUSINESS AND PROFESSIONS CODE § 6047:

Rule III. General Applicants

Section 31. To be certified as a general applicant for admission to practice law in California a general applicant, in addition to complying with the requirements of Rule II, shall:

(1) Possess the requisite general educational qualifications, as prescribed in Rule VIII hereof;

(2) Have registered as a general applicant in accordance with Rule V hereof;

(3) Have filed application for and passed the first-year law students' examination or have filed satisfactory proof of exemption therefrom, in accordance with Rule VI hereof;

(4) Possess the legal educational qualifications, as prescribed in Rule IX hereof;

(5) Have filed formal application as a general applicant in accordance with Rule VII hereof;

(6) After having satisfied the foregoing requirements, have passed the bar examination as prescribed in Rule XI hereof.

Rule IX. Legal Education

Section 91. The legal educational qualifications required of every general applicant in addition to compliance with the provisions of Rule VI hereof are:

(1) Graduation from an accredited law school requiring either substantially the full time of its students for at least three years, or a part only of the time of its students for at least four years and the completion of a course of study in law school of not less than 1200 hours of study in residence extending over a period of not less than ninety weeks for full-time students, or not less than one hundred and twenty weeks for part-time students.

* * * * *

(4) Proof satisfactory to, and in the form prescribed by, the committee that the applicant has studied law diligently and in good faith for at least four years, which study shall be by one or more of the following methods:

(a) In a law school that is authorized to confer professional degrees and requires classroom attendance of its students for a minimum of 270 hours a year. A law school in the State of California shall not qualify as one requiring classroom attendance of its students for a minimum of 270 hours a year unless such school:

(i) Adopts and enforces rules or regulations generally requiring each of its students to pursue a course of study requiring not less than 270

hours classroom attendance during any twelve month period * * *.

* * * * *

To receive credit for one year's study an applicant shall have received passing grades in courses for which classroom attendance was required for a minimum of 270 hours extending over a period of not less than one academic year and encompassing not less than two semesters of 15 weeks each or three quarters of 10 weeks each during each of which the applicant received passing grades in courses requiring classroom attendance for a minimum of 90 hours per semester or 60 hours per quarter. No more than one year's credit shall be given for studies accomplished during any twelve month period except that an applicant who completed courses entitling him to one year's credit during a normal academic year and continued his studies during a following summer session beginning less than twelve months after the beginning of such prior academic year may receive credit towards completion of the following year's requirements for study completed during such summer session and that an applicant who, for good cause, was permitted to pursue a course of study requiring less than 270 but not less than 180 hours classroom attendance during his second or subsequent year of study and thereafter completed courses requiring in excess of 300 hours classroom attendance during a twelve month period, upon the recommendation of the school in which such study was completed, will be given credit for

such excess, not to exceed 60 hours from any such subsequent year, toward fulfillment of the requirement for such earlier year.

• • • • •

[Subsections (b) and (c) deal with quantification and supervision of law-office, judge's-chambers, and correspondence-school study.]

• • • • •

A person who is required to take the first-year law students' examination shall not receive credit for any law study until he has passed such examination or become entitled to exemption therefrom; nor shall he receive credit for more than one year of law study as of the date of passing such examination or becoming entitled to exemption therefrom, unless upon petition and for good cause in a particular case the committee decides that additional credit should be given.

• • • • •

Rule XVIII. Standards and Procedures for Preliminary Approval, Provisional Accreditation and Full Accreditation of Law Schools

• • • • •

Section 182. Standards for Accredited Law Schools.

(1) To be accredited a law school shall establish that its paramount objective is to provide a sound legal education and that it is accomplishing that objective. It shall do so by showing that it substantially complies with the standards set forth herein and the factors applicable thereto.

• • • • •

Standard D: The School shall maintain a sound educational program.

• • • • •

(2) The committee shall issue as an appendix to this Rule XVIII, a statement of the factors governing the

interpretation and application of the Standards and shall have the authority to alter or amend the same.

* * * * *

Section 185.4. Standard D—the school shall maintain a sound educational program.

* * * * *

(g) A full-time student is one who devotes substantially all of his working hours to the study of law. Normally, no student in a full-time program should be otherwise employed in excess of sixteen hours a week. To insure that students registered in a full-time program are in fact full-time students, the School should structure its class schedule to provide for required or essential courses at various times during the morning and afternoon. No program will be approved as a full-time program, unless students are required to take 90% of the units in the first year and 80% of the units in each year thereafter, for which degree credit is allowed, between the hours of eight a.m. and five p.m., Monday through Friday and unless at least 30% of the class sessions for which unit credit is allowed in each of the first two years are given between eight a.m. and one p.m. and at least 30% of such class sessions are given between noon and five p.m. A school may, for good cause, in exceptional cases, permit a full-time student to attend classes on a schedule different from that specified herein, provided a record is maintained of all such persons and the reasons therefor.